

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DEJERRY D. POWELL,
#722547,

Plaintiff,

Case Number: 22-12495
HON. BERNARD A. FRIEDMAN

v.

ELIZABETH HERTERL and
DR. LAQUARDRA,

Defendants.

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OPINION AND ORDER DISMISSING CASE

DeJerry Powell, who is in the custody of the Michigan Department of Corrections (MDOC), filed a *pro se* civil rights complaint under 28 U.S.C. § 1983. The Court granted Powell leave to proceed *in forma pauperis*. (ECF No. 5). The complaint names two defendants: Elizabeth Herterl and Dr. LaQuardra. Powell's principal claim is that his Eighth Amendment rights were violated because he has not received adequate mental health treatment while incarcerated in various MDOC facilities. Powell also lists numerous other alleged violations unrelated to the mental health claim. After screening the complaint under 28 U.S.C. § 1915(e),¹ the

¹ Under 28 U.S.C. § 1915(e)(2), the Court is required to *sua sponte* dismiss an *in forma pauperis* complaint if it determines that the action is frivolous or malicious,

Court issued an order requiring Powell to show cause why the complaint should not be dismissed for failure to state a claim because Powell failed to allege personal involvement by either named defendant in the claimed constitutional violations. (ECF No. 6).

Powell has submitted six filings (ECF Nos. 7-12) since the Court ordered him to show cause, but none correct the complaint's deficiencies. All of Powell's filings are rambling and difficult to follow. Only two (ECF Nos. 8, 10) mention the defendants named in this case. Powell states that he wrote a letter to defendants Herterl and LaQuardra informing them "about [brutality] and abuse misuse [sic] of power – power control issues willful neglect deliberate[] in-difference [sic] to my safety ... And Health Complaints," but nothing happened. (ECF No. 8, PageID.99). He also states that he "Reach[ed] out" to defendants "who funding [sic] services for MDOC Michigan Department Human services" and that he has "sent mail Reg[ar]ding ben[e]fits income and Chronic Brut[a]lity and Trauma and High Risk Situation and Crime" but that he continues to be "place[d] in High Risk [situation]." (ECF No. 10, PageID.116).

Defendants may not be held liable under § 1983 for the unconstitutional conduct of others under a theory of *respondeat superior* unless it is shown "that the

fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief.

supervisor encouraged the specific incident of misconduct or in some other way directly participated in it.” *Bellamy v. Bradley*, 729 F.2d 416, 421 (6th Cir. 1984). Plaintiff fails to allege that Herterl or LaQuardra engaged in any “active unconstitutional behavior” rather than a “mere failure to act.” *Shehee v. Luttrell*, 199 F.3d 295, 300 (6th Cir. 1999) (cleaned up). Correspondence to the defendants complaining about insufficient medical care, without more, is insufficient to state a claim against a supervisor under § 1983. *See Reed-Bey v. Pramstaller*, 607 F. App’x 445, 450-51 (6th Cir. 2015) (letter to health care services concerning inadequate medical treatment insufficient to state a claim against supervisor under § 1983 where plaintiff failed to allege supervisor’s personal involvement in medical care). Powell, therefore, has failed to state a claim upon which relief may be granted. Accordingly,

The Court DISMISSES the complaint pursuant to 28 U.S.C. § 1915(e)(2). The Court DENIES Powell’s request to consolidate (ECF No. 7) as moot.

The Court finds an appeal in this case would be frivolous and not taken in good faith. 28 U.S.C. § 1915(a)(3); *Coppedge v. United States*, 369 U.S. 438, 445 (1962). Therefore, Powell is not certified to pursue an appeal from this judgment *in*

forma pauperis. 28 U.S.C. § 1915(a)(3). Nevertheless, should Powell decide to file a notice of appeal, he may seek leave from the Court of Appeals to proceed on appeal *in forma pauperis*. See Fed. R. App. P. 24(a)(5).

IT IS SO ORDERED

Dated: January 13, 2023
Detroit, Michigan

s/Bernard A. Friedman

Hon. Bernard A. Friedman
Senior United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first-class U.S. mail on January 13, 2023.

DeJerry D. Powell #722547
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2727 E. BEECHER STREET
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s/Johnetta M. Curry-Williams
Case Manager